SUPREME COURT, U. S.

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In the Supreme Court of the United States

October Term, 1968
No. 1370

ALEXANDER H. LINDSAY,
Appellant

v.

JOSEPH J. KELLEY, JR., Secretary of the Commonwealth of Pennsylvania,
Appellee

On Appeal from the Supreme Court of Pennsylvania

MOTION TO DISMISS OR AFFIRM

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[1] The plaintiffs and appellants in the Supreme Court of Pennsylvania in the above case were Irvin Stander and Alexander H. Lindsay. The record does not disclose any reason for the elimination of the name of Irvin Stander from the caption as a party to the case.

MOTION TO DISMISS OR AFFIRM

Appellee moves that the present appeal be dismissed or that the final judgment of the Supreme Court of Pennsylvania in the present case be affirmed on the grounds that the Federal question presented is so unsubstantial as not to warrant argument thereon. Further that the appeal raises issues not averred in the pleadings in court below.

STATEMENT

On March 15, 1967, the General Assembly of the Commonwealth of Pennsylvania enacted Act No. 2 providing for the calling of a Constitutional Convention. That Act provided that the question as to whether a limited Constitutional Convention be convened should be submitted to the electorate at the primary election to be held in May, 1967. It specified the form of question to be voted upon by the electorate and defined the subject matter of the Constitution to be considered by the convention. The significant portion of the precise question specified by the Act and appearing on the ballot was:

> "Shall a constitutional convention be called in accordance with, and subject to, the limitations and requirements contained in Act Number 2 of the 1967 Session of the General Assembly, to prepare for submission to the electorate proposals for the revision of certain Articles of the State Constitution."[2]

[2] Appellant's appeal does not comprehend any issue of constitutionality. Its Notice of Appeal indicates that the same is from the decision of the Supreme Court of Pennsylvania at No. 3, May Term, 1969. That decision involved an adjudication confirming the action of the court below in refusing a preliminary injunction. The final order in said appeal was filed by the Supreme Court of Pennsylvania on October 11, 1968, seven months prior to the date of the filing of the said Notice of Appeal to the Supreme Court of the United States.

The official record of the Secretary of the Commonwealth of Pennsylvania discloses that 1,844,507 votes were cast on the question as to whether the convention should be convened; 1,141,931 votes being cast in favor and 703,576 against the calling of the convention.

The Act provided that the convention should consist of 163 delegates; three to be elected from each of the fifty senatorial districts in Pennsylvania and thirteen ex officio members of the General Assembly of the Commonwealth who would have the powers of elected delegates.[3] The convention was scheduled to and did convene on December 1, 1967, and completed its work February 29, 1968.

The entire thrust of appellant's complaint and argument is directed at the Judiciary Article (Article V) of the amended Constitution. The vote approving the Judiciary Article was 910,805 in favor and 729,845 against.

The sole reference to any issue of federal unconstitutionality appears in Paragraph 9 of appellant's complaint where he alleges as follows:

> "Plaintiffs are informed, believe, and therefore aver that Proposal No. 7, appearing as Ballot

[3] The ex officio delegates specified in Section 2 of Act No. 2 were to be the Lieutenant Governor, the President Pro-Tempore of the Senate, the Majority Leader of the Senate, the Majority Whip of the Senate, the Minority Leader of the Senate, the Minority Whip of the Senate, the Minority Caucus Chairman of the Senate, the Speaker of the House, the Majority Leader of the House, the Majority Whip of the House, the Minority Leader of the House, the Minority Whip of the House, and the Minority Caucus Chairman of the House.

> Question V, proposing an amendment to Article V of the Constitution is contrary to and violative of the constitutional guarantees of the separation and balance of legislative and judicial powers and beyond the scope of the convention's powers by effectively eliminating from the court of the Commonwealth all constitutional power."

Article V converted the fragmented and archaic court system of Pennsylvania into a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, Courts of Common Pleas, Community Courts, Municipal and Traffic Courts in the City of Philadelphia and such other courts as might be provided by law and Justices of the Peace. It specified that all courts be included in this unified judicial system.

It further designated the Supreme Court as the highest court of the Commonwealth "in which shall be reposed the supreme judicial power of the Commonwealth."

The new article further provided for the centralized administration of the court system of Pennsylvania under the general supervisory authority of the Supreme Court. It established a system of merit retention for judges; set up procedures for removal, suspension, discipline and compulsory retirement of judges and made major improvements in the minor judiciary system. It conferred broad powers to prescribe general rules governing practice, procedure and all court business upon the Supreme Court. It guaranteed due process appeals from all decisions of inferior courts. Its definition of the authority of the

Supreme Court was directed to the maintenance and protection of the authority, prestige and independence of the entire Pennsylvania judicial system. That authority is now more clearly spelled out in the Constitution of Pennsylvania than is the authority of the Supreme Court of the United States in the federal system.

ARGUMENT

The people of Pennsylvania, in the exercise of their sovereign powers, adopted certain amendments to their Constitution in 1968. They did not choose to pursue the amendment procedures spelled out in the Constitution, but instead, used the convention method—a perfectly proper and accepted means of amending constitutions and one which, in cases where the proposals are apt to be sweeping and controversial; as in this instance, is peculiarly appropriate. In taking this step, the people were exercising their highest political function, and to deny them the fruit of their labor would be to disfranchise them, and to disfranchise them would be to deny them a republican form of government as guaranteed by Art. 4, §4 of the United States Constitution. The convention was properly called by the people according to law and was legitimate in every aspect. However, even if the convention itself was illegitimate, upon the adoption of its proposals by the electorate, such proposals became valid as part of the fundamental law.[4]

Selection of Delegates

Appellant attempts to corrupt and distort the one man—one vote rule of your Honorable Court enunci-

[4] Jameson on Constitutional Conventions, §124.

ated in *Baker v. Carr*,[5] *Gray v. Sanders*,[6] *Reynolds v. Sims*[7] and *Lucas v. Colorado*.[8] He contends that the designation of thirteen elected members of the Pennsylvania General Assembly as ex officio members of the Convention violated that rule. He would place an advisory body authorized to make only recommendations in the same category as a body empowered to enact laws and ordinances. His position is clearly erroneous on two counts.

1. The one man—one vote rule has been strictly applied in all cases involving the election of members of legislative bodies whose function it is to enact legislation. It does not apply to committees or members of advisory bodies who are appointed to make recommendations for legislation. This is particularly true in a case as the present where the recommendations of the Convention are submitted to the people in whom is reposed the sovereign power for approval or rejection.

A convention cannot change anything. As John Randolph said of the Virginia Convention of 1829, a convention is called "as a state physician to propose remedies for the state's diseases." After it prescribes, it can perform no other function. Thereafter, the fate of its creation rests in the hands of the people. If they adopt its proposals, this then becomes the charter law and the courts may not disturb it. The convention has no binding authority, it proposes but

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[5] 369 U.S. 186, 82 S. Ct. 691.
[6] 372 U.S. 368, 83 S. Ct. 801.
[7] 377 U.S. 533, 84 S. Ct. 1362 (1964).
[8] 377 U.S. 713, 84 S. Ct. 1459 (1964).

the electorate disposes. It does not elect nor does it enact. It makes only recommendations.

Traditionally constitutional conventions are a part of our common law of government and, despite the existence of other modes of amendment, the convention method exists side-by-side with all other means. In other words, a constitutional convention called by the people, may propose charter changes, and the approval of such changes by those qualified to exercise the elective franchise is the assertion by the organized body politic of its choice. Since that body is vested with ultimate sovereignty, it has the power to control and alter at will the law which it originally created.

The apportionment cases above cited stand only for the proposition that the creation of legislative districts on any basis which does not provide equal weight to every ballot cast is the denial of the equal protection of the laws and consequently unconstitutional. No case denies the ultimate authority of the people to amend their constitution. *Lucas v. Colorado,* supra, recognized the right of the people to conclusively express their will through a referendum. That case is authority only for the proposition that the approval by the electorate will not validate a result which conflicts with constitutional provisions. In *Lucas,* it was not the method whereby the result was accomplished which was tainted, but the result itself.

Judge Thomas M. Cooley, in his famous work on *Constitutional Limitations*[9] layed down the rule that:

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[9] 8 Ed., Vol. I, Chap. III, p. 89.

> ". . . each State must judge for itself what provisions shall be inserted in its constitution; how the powers of government shall be apportioned in order to their proper exercise; what protection shall be thrown around the person or property of the citizen; and to what extent private rights shall be required to yield to the general good. And *the courts of the State, still more the courts of the Union, would be precluded from inquiring into the justice of their action, or questioning its validity, because of any supposed conflict with fundamental rules of right or of government, unless they should be able to show collision at some point between the instrument thus formed and that paramount law which constitutes, in regard to the subjects it covers, the fundamental rule of action throughout the whole United States.*" (Emphasis added.)

It must not be forgotten that the Constitution of the United States, Article 4, §6, provides that the United States shall guarantee to every State in the Union, a republican form of government. *Black's Constitutional Law*,[10] defines a republican form of government thus:

> "A republican government is one in which the powers of sovereignty are vested in the people and are exercised by the people either directly, or through representatives chose by the people to whom those powers are specially delegated."

In summary, it can be seen that the will of the people, properly ascertained, determines absolutely

[10] Ch. X, p. 309.

the frame of government, and with the exception that a state constitution cannot violate the national one, courts are powerless to interfere with the people's expressed wishes.

2. Of the utmost importance here is the fact that the calling of the Convention hinged upon the electorate's approval. It was not an arbitrary act of the Legislature not having the prior sanction of the sovereign. The people voted in favor of a convention "to be called in accordance with and subject to the limitations and requirements contained in Act No. 2." Among the essential provisions of that Act was the designation of thirteen ex officio members to the convention. These ex officio members were designated by a legislative body elected from and representing the entire electorate of Pennsylvania from districts which were defined under an apportionment plan prepared by the Supreme Court of Pennsylvania on February 4, 1966.[11] That apportionment was fixed strictly along the guidelines established by Baker, Reynolds and other pertinent decisions. An affirmative vote for the calling of the convention "in accordance with Act No. 2" was also a vote in favor of the thirteen ex officio delegates named therein.

The language of Chief Justice Bell in the opinion of the Supreme Court of Pennsylvania provides a complete answer to appellant's position. He stated:[12]

> "The function of the Constitutional Convention was to propose and *recommend* to the elec-

[11] *Butcher v. Bloom*, 420 Pa. 305.

[12] *Stander v. Kelley*, 433 Pa. 406 at 420.

torate of Pennsylvania changes and alterations in the existing State Constitution. The Convention had no law-making powers of any kind. Act No. 2, Sections 7, 8 and 9. The approval or disapproval of the Constitutional Convention's proposed amendments in April of 1968 was submitted to the electorate of Pennsylvania solely on a statewide basis, which is the purest form of "one man, one vote." If the convention which submitted the proposals did not represent all of the voters of the State equally, this defect was clearly cured by the approval of the voters at the April 28, 1968 statewide election.

We find no merit in this contention of appellants.

Since the delegates to the Constitutional Convention had no power to bind the people, and since a majority of the electorate of Pennsylvania voted to adopt the new Judiciary Article, the appellants cannot claim injury or Constitutional infirmity from the manner in which the delegates were chosen."

Appellant's position is predicated upon a completely erroneous conception of sovereignty. The true status of a convention is defined by Judge Cooley as follows:[13]

"The Constitutional Convention is a representative of sovereignty only in a very qualified sense, and for the specific purpose, and with the restricted authority to put in proper form

[13] Cooley's Constitutional Limitations, supra, Vol. I, p. 88.

the questions of amendment upon which the people are to pass; but the changes in the fundamental law of that state must be enacted by the people themselves."

Judicial v. Legislative Supremacy

Appellant suggests that the effect of the new Judiciary Article to the Pennsylvania Constitution is to nullify the authority of the judiciary and confer broad judicial authority upon the Pennsylvania Legislature. The language of Article V which is set forth in full in the Appendix attached hereto is sufficiently persuasive of its validity as to obviate the need for any elaborate argument in support thereof.[14] An examination of the provisions of this Article as previously briefly summarized illustrates the speciousness of this position and the impossibility of comprehension of his argument in support thereof.

None of the functions of the court have been taken away by the new Article V. A comparison of the provisions of the repealed Article V and the new Article V discloses that the new more clearly defines and protects the authority of the Supreme and inferior courts. The new Article V provides in Section 2 that:

"The Supreme Court of Pennsylvania shall be the highest court of the Commonwealth and

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[14] The Court's attention is specifically called to the powers conferred upon the courts by Sections 1, 2, 9, 10 and 11 of Article V.

in this court shall be reposed the supreme judicial power of the Commonwealth."

No language more clearly establishes and protects the jurisdiction of the Supreme Court of Pennsylvania and the perpetuation of all power necessary, proper, and incidental to the exercise thereof.

Nonjudicial authority pertaining to the courts has always been exercised by the Legislature. Its right to create statutory courts has never been denied. It may prescribe the rules of civil and criminal practice, which authority Article V now reposes in the Judiciary. It defines the areas of appellate jurisdiction, fixes procedures for and the time limits in which appeals may be taken, defines crimes, provides criminal penalties, and exercises numerous other powers incidental to the administration of justice. But it does not exercise any judicial function. It cannot hear cases or appeals, impose fines nor make any judicial determination of any kind.

While the doctrine of the separation of powers of the executive, legislative and judicial branches of government is fundamental to our concept of constitutional government, it must be recognized that this does not mean an absolute or completely sterile condition, for there is a necessary blending of powers in some areas. As pointed out by Professor Black,[15] the principle does not connote an absolute exclusion. For example, in the federal as well as most state governments, the executive takes part in legislation through periodic messages to the legislative branch and through

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[15] Black's Constitutional Law, §52.

the exercise of veto powers, the legislative department exercises judicial functions in removing public officers (including judges, at times) through impeachment proceedings in which one branch of the legislature acts as accuser and the other as judge, and the judiciary, of course, interprets the meaning and passes upon the constitutionality of legislative enactments.

What the doctrine of the separation of powers does mean is that no branch of government, except as permitted by the Constitution, may usurp any of the essential functions of another branch. With particular reference to this case, it would mean that the Legislature could not arrogate traditional judicial authority to itself.

Appellant lays considerable stress upon the courts' dependence upon the Legislature for jurisdiction, and in his blind passion against change, overlooks the circumstance that, with the exception of a very few enumerated powers set forth in the Constitution as it previously existed, the allocation of jurisdiction of various courts including the Supreme Court has always been made by the Legislature. This is likewise true with respect to the jurisdiction of Your Honorable Court.

A brief reference to the new Judiciary Article demonstrates that the changes made by it have brought about a wider gap between the Legislature and the courts. Article V, Section 10(c) confers the absolute power to prescribe rules governing the practice, procedure and conduct of all courts upon the Supreme Court. It may provide for assignment and reassign-

ment of actions and appeals among the several courts, admission to the Bar, the administration of all courts and supervision of all officers of the judicial branch. This new and extensive authority empowers the Supreme Court to exercise almost absolute control over judicial matters.

Under the previous constitution, the Legislature had the authority to establish judicial districts. As now provided (Art. V, §11) the number and boundaries of judicial districts may be changed only with the advice and consent of the Supreme Court.

The increased power of the Supreme Court is also reflected in the provisions of Article V, §7(b). While that section authorizes the legislature to establish classes of magisterial districts and fix the salaries of justices of the peace in each class, the number and boundaries of magisterial districts within each judicial district is a matter solely within the powers of the Supreme Court.

In summary, therefore, it appears that the amended Constitution of 1968 emphasizes and perpetuates the separation of powers principle. The Legislature has gained no new judicial powers but has lost its right to control the rule-making authority of the courts, the right to create judicial districts in low-populated counties and to attach contiguous districts without the consent of the Supreme Court; it has also lost the right to determine the wards, boroughs, townships and districts in which justices of the peace are to be elected, and which rights has passed to the Supreme Court. In addition thereto, it is now a specific provision of the Constitution that the Legislature may

not diminish the salaries of judges alone, whereas the proscription was a matter of judicial decision prior to the amendments.

For further elaboration as to the additional authority conferred upon the Supreme Court by the new Article V, see the opinion of Chief Justice Bell wherein he states:[16]

> "Generally speaking, the Executive Branch has the power to recommend legislation and the power and the duty to see that the laws are faithfully administered and carried out. The Legislative Branch has the power and the duty to pass legislation; and the Courts have the power, the duty and the responsibility of interpreting the Constitution and all legislation and determining whether legislation and presidential orders and all other questions and issues meet or violate the requirements of the Constitution."

Appellee calls specific attention to Article I, §11 of the Pennsylvania Constitution which provides that:

> "All courts shall be open, and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice, administered without sale, denial or delay."

It is thus abundantly clear that the courts retain their historical character as the ultimate and essential guardian of individual rights and that the courts of Pennsylvania shall and will continue to maintain their protection without interference from the Legislature.

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[16] *Stander v. Kelley*, supra at 422. Appellant's Jurisdictional Statement, p. 15a et seq.

CONCLUSION

Appellee respectfully requests that this subject be considered as promptly as possible in order to avoid any interference with the orderly administration of justice and the proper functioning of the courts within the Commonwealth of Pennsylvania.

Article V of the new Constitution became effective January 1, 1969. Prior and subsequent thereto various laws were enacted implementing those provisions thereof which were not self-executing. Among these are statutes providing for the right of appeal in all cases from courts of record, providing for right of appeal in all cases from adjudications of administrative agencies of political subdivisions and from adjudications of administrative agencies of the Commonwealth and from decisions of the minor judiciary, implementing provisions with respect to arbitration, establishing classes of magisterial districts, providing for the office of public defender and establishing community courts.

The Supreme Court has initiated action in fulfillment of its increased authority by appointing a court administrator and the establishment of the number and boundaries of new magisterial districts. A Judicial Inquiry and Review Board has been established. The various lower courts in the various judicial districts have been combined into the Courts of Common Pleas. Furthermore, those judges who previously sought re-election in 1969, are presently seeking retention on a merit basis rather than being required to

engage in partisan political campaigns. These few examples indicate the compelling necessity that there be prompt settlement of this issue so that all doubt as to the validity of the authority of the Pennsylvania courts be resolved.

Appellee submits that no issue of federal stature is pending before this Honorable Court. If the framing of an amendment to a constitution and the ratification thereof by the people were open to nullification on purely technical grounds including the makeup of the convention which drafted the proposals to be voted upon by the electorate, then the United States of America has been operating for over 180 years under an invalid constitution. The resolution of the Continental Congress which brought about the Constitutional Convention of 1787 did not call for a new charter or a new form of government; it expressly called for a revision of the Articles of Confederation. However, in complete disregard of the resolution, the Convention overhauled the existing form of government in its entirety, and constructed a new frame therefor, and this, in a sense, was both extra-legal and revolutionary. Not only this, but in virtual defiance of the amendment provisions of the Articles of Confederation which it was supposed to amend, the Convention provided (in Article VII) that the new constitution was to become effective when ratified by only nine states. This directly contravened Article XIII of the Articles of Confederation which required unanimous approval before any alteration could become effective.

The people of Pennsylvania have ratified and adopted the proposed constitutional amendments. They

have asserted their sovereign power to alter or amend their constitution and once having expressed their will through their franchise, no court should interfere therewith.

For the foregoing reasons, it is respectfully submitted that the present appeal be dismissed, or that the final judgment of the Supreme Court of Pennsylvania be affirmed.

Respectfully submitted,
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APPENDIX

CONSTITUTION OF PENNSYLVANIA 1968

ARTICLE V
THE JUDICIARY

Unified Judicial System

Section 1. The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace. All courts and justices of the peace and their jurisdiction shall be in this unified judicial system.

Supreme Court

Section 2. The Supreme Court (a) shall be the highest court of the Commonwealth and in this court shall be reposed the supreme judicial power of the Commonwealth;

(b) shall consist of seven justices, one of whom shall be the Chief Justice; and

(c) shall have such jurisdiction as shall be provided by law.

Superior Court

Section 3. The Superior Court shall consist of seven judges, one of whom shall be the President

judge, and its jurisdiction shall be as provided by law.

Commonwealth Court

Section 4. The Commonwealth Court shall be a State-wide court, and shall consist of the number of judges and have such jurisdiction as shall be provided by law. One of its judges shall be the president judge.

Courts of Common Pleas

Section 5. There shall be one court of common pleas for each judicial district (a) having such divisions and consisting of such number of judges as shall be provided by law, one of whom shall be the president judge; and

(b) having unlimited original jurisdiction in all cases except as may otherwise be provided by law.

Community Courts; Philadelphia Municipal Court and Traffic Court

Section 6. (a) In any judicial district a majority of the electors voting thereon may approve the establishment or discontinuance of a community court. Where a community court is approved, one community court shall be established; its divisions, number of judges and jurisdiction shall be as provided by law.

(b) The question whether a community court shall be established or discontinued in any judicial district shall be placed upon the ballot in a primary election by petition which shall be in the form prescribed by the officer of the Commonwealth who under law shall have supervision over elections. The

petition shall be filed with that officer and shall be signed by a number of electors equal to five percent of the total votes cast for all candidates for the office occupied by a single official for which the highest number of votes was cast in that judicial district at the last preceding general or municipal election. The manner of signing such petitions, the time of circulating them, the affidavits of the persons circulating them and all other details not contained herein shall be governed by the general laws relating to elections. The question shall not be placed upon the ballot in a judicial district more than once in any five-year period.

(c) In the City of Philadelphia there shall be a municipal court and a traffic court. The number of judges and the jurisdiction of each shall be as provided by law. These courts shall exist so long as a community court has not been established or in the event one has been discontinued under this section.

Justices of the Peace; Magisterial Districts

Section 7. (a) In any judicial district, other than the City of Philadelphia, where a community court has not been established or where one has been discontinued there shall be one justice of the peace in each magisterial district. The jurisdiction of the justice of the peace shall be as provided by law.

(b) The General Assembly shall by law establish classes of magisterial districts solely on the basis of population and population density and shall fix the salaries to be paid justices of the peace in each class. The number and boundaries of magisterial districts of

each class within each judicial district shall be established by the Supreme Court or by the courts of common pleas under the direction of the Supreme Court as required for the efficient administration of justice within each magisterial district.

Other Courts

Section 8. The General Assembly may establish additional courts or divisions of existing courts, as needed, or abolish any statutory court or division thereof.

Right of Appeal

Section 9. There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

Judicial Administration

Section 10. (a) The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace, including authority to temporarily assign judges and justices of the peace from one court or district to another as it deems appropriate.

(b) The Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts and justices of the peace.

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the judicial branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.

(d) The Chief Justice and president judges of all courts with seven or less judges shall be the justice or judge longest in continuous service on their respective courts; and in the event of his resignation from this position the justice or judge next longest in continuous service shall be the Chief Justice or president judge. The president judges of all other courts shall be selected for five-year terms by the members of their respective courts, except that the president judge of the traffic court in the City of Philadelphia shall be appointed by the Governor. Chief Justice or president judge may resign such position and remain a member of the court. In the event of a tie vote for office of president judge in a court which elects its

president judge, the Supreme Court shall appoint as president judge one of the judges receiving the highest number of votes.

(e) Should any two or more justices or judges of the same court assume office at the same time, they shall cast lots forthwith for priority of commission, and certify the results to the Governor who shall issue their commissions accordingly.

Judicial Districts; Boundaries

Section 11. The number and boundaries of judicial districts shall be changed by the General Assembly only with the advice and consent of the Supreme Court.

Qualifications of Justices, Judges and Justices of the Peace

Section 12. (a) Justices, judges and justices of the peace shall be citizens of the Commonwealth. Justices and judges, except the judges of the traffic court in the City of Philadelphia, shall be members of the bar of the Supreme Court. Justices and judges of state-wide courts, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within the Commonwealth. Other judges and justices of the peace, for a period of one year preceding their election or appointment and during their continuance in office, shall reside within their respective districts, except as provided in this article for temporary assignments.

(b) Judges of the traffic court in the City of Philadelphia and justices of the peace shall be mem-

bers of the bar of the Supreme Court or shall complete a course of training and instruction in the duties of their respective offices and pass an examination prior to assuming office such courses and examinations shall be as provided by law.

Election of Justices, Judges and Justices of the Peace; Vacancies

Section 13. (a) Justices, judges and justices of the peace shall be elected at the municipal election next preceding the commencement of their respective terms of office by the electors of the Commonwealth or the respective districts in which they are to serve.

(b) A vacancy in the office of justice, judge or justice of the peace shall be filled by appointment by the Governor. If the vacancy occurs during the session of the Senate, the appointment shall be with the advice and consent of two-thirds of the members elected to the Senate, except in the case of justices of the peace which shall be by a majority. If the vacancy occurs during sine die adjournment of the Senate such appointment shall not require the advice and consent of the Senate. The person so appointed shall serve for an initial term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs.

(c) The provisions of section thirteen (b) shall not apply either in the case of a vacancy to be filled by retention election as provided in section fifteen (b). In case of a vacancy created by failure of a justice or judge to file a declaration for retention election as provided in section fifteen (b). In case of a vacan-

cy occurring at the expiration of an appointive term under section thirteen (b), the vacancy shall be filled by election as provided in section thirteen (a).

(d) At the primary election in 1969, the electors of the Commonwealth may elect to have the justices and judges of the Supreme, Superior, Commonwealth and all other statewide courts appointed by the Governor from a list of persons qualified for the offices submitted to him by the Judicial Qualifications Commission. If a majority vote of those voting on the questions is in favor of this method of appointment, then whenever any vacancy occurs thereafter for any reason in such court, the Governor shall fill the vacancy by appointment in the manner prescribed in this subsection. Such appointment shall not require the consent of the Senate.

(e) Each justice or judge appointed by the Governor under section thirteen (d) shall hold office for an initial term ending the first Monday of January following the next muncipal election more than twenty-four months following the appointment.

Judicial Qualifications Commission

Section 14. (a) Should the method of judicial selection be adopted as provided in section thirteen (d); there shall be a Judicial Qualifications Commission, composed of four non-lawyer electors appointed by the Governor and three non-judge members of the bar of the Supreme Court appointed by the Supreme Court. No more than four members shall be of the same political party. The members of the commission shall serve for terms of seven years, with one

member being selected each year. The commission shall consider all names submitted to it and recommend to the Governor not fewer than ten nor more than twenty of those qualified for each vacancy to be filled.

(b) During his term, no member shall hold a public office or public appointment for which he receives compensation, nor shall he hold office in a political party or political organization.

(c) A vacancy on the commission shall be filled by the appointing authority for the balance of the term.

Tenure of Justices, Judges and Justices of the Peace

Section 15. (a) The regular term of office of justices and judges shall be ten years and the regular term of office for judges of the municipal court and traffic court in the City of Philadelphia and of justices of the peace shall be six years. The tenure of any justice or judge shall not be affected by changes in judicial districts or by reduction in the number of judges.

(b) A justice or judge elected under section thirteen (a), appointed under section thirteen (d) or retained under this section fifteen (b) may file a declaration of candidacy for retention election with the officer of the Commonwealth who under law shall have supervision over elections on or before the first Monday of January of the year preceding the year in which his term of office expires. If no declaration is filed, a vacancy shall exist upon the expiration of the term of office of such justice or judge, to be filled by elec-

tion under section thirteen (a) or by appointment under section thirteen (d) if applicable. If a justice or judge files a declaration, his name shall be submitted to the electors without party designation, on a separate judicial ballot or in a separate column on voting machines, at the municipal election immediately preceding the expiration of the term of office of the justice or judge, to determine only the question whether he shall be retained in office. If a majority is against retention, a vacancy shall exist upon the expiration of his term of office, to be filled by appointment under section thirteen (b) or under section thirteen (d) if applicable. If a majority favors retention, the justice or judge shall serve for the regular term of office provided herein, unless sooner removed or retired. At the expiration of each term a justice or judge shall be eligible for retention as provided herein, subject only to the retirement provisions of this article.

Compensation and Retirement of Justices, Judges and Justices of the Peace

Section 16. (a) Justices, judges and justices of the peace shall be compensated by the Commonwealth as provided by law. Their compensation shall not be diminished during their terms of office, unless by law applying generally to all salaried officers of the Commonwealth.

(b) Justices, judges and justices of the peace shall be retired upon attaining the age of seventy years. Former and retired justices, judges and justices of the peace shall receive such compensation as shall be provided by law. No compensation shall be paid to any

justice, judge or justice of the peace who is suspended or removed from office under section eighteen of this article or under article six.

(c) A former or retired justice or judge may, with his consent, be assigned by the Supreme Court on temporary judicial service as may be prescribed by rule of the Supreme Court.

Prohibited Activities

Section 17. (a) Justices and judges shall devote full time to their judicial duties, and shall not engage in the practice of law, hold office in a political party or political organization, or hold an office or position of profit in the government of the United States, the Commonwealth or any municipal corporation or political subdivision thereof, except in the armed service of the United States or the Commonwealth.

(b) Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court.

(c) No justice, judge or justice of the peace shall be paid or accept for the performance of any judicial duty or for any service connected with his office, any fee, emolument of perquisite other than the salary and expenses provided by law.

(d) No duties shall be imposed by law upon the Supreme Court or any of the justices thereof or the Superior Court or any of the judges thereof, except

such as are judicial, nor shall any of them exercise any power of appointment except as provided in this Constitution.

Suspension, Removal, Discipline and Compulsory Retirement

Section 18. (a) There shall be a Judicial Inquiry and Review Board having nine members as follows: three judges of the courts of common pleas from different judicial districts and two judges of the Superior Court, all of whom shall be selected by the Supreme Court; and two non-judge members of the bar of the Supreme Court and two non-lawyer electors, all of whom shall be selected by the Governor.

(b) The members shall serve for terms of four years, provided that a member, rather than his successor, shall continue to participate in any hearing in progress at the end of his term. A vacancy on the board shall be filled by the respective appointing authority for the balance of the term. The respective appointing authority may remove a member only for cause. No member shall serve more than four consecutive years; he may be reappointed after a lapse of one year. Annually the members of the board shall elect a chairman. The board shall act only with the concurrence of a majority of its members.

(c) A member shall not hold office in a political party or political organization. Members, other than judges, shall be compensated for their services as the Supreme Court shall prescribe. All members shall be reimbursed for expenses necessarily incurred in the discharge of their official duties.

(d) Under the procedure prescribed herein, any justice or judge may be suspended, removed from office or otherwise disciplined for violation of section seventeen of this article, misconduct in office, neglect of duty, failure to perform his duties, or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute and may be retired for disability seriously interfering with the performance of his duties.

(e) The board shall keep informed as to matters relating to grounds for suspension, removal, discipline, or compulsory retirement of justices or judges. It shall receive complaints or reports, formal or informal, from any source pertaining to such matters, and shall make such preliminary investigations as it deems necessary.

(f) The board, after such investigation, may order a hearing concerning the suspension, removal, discipline or compulsory retirement of a justice or judge. The board's orders for attendance of or testimony by witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings.

(g) If, after hearing, the board finds good cause therefor, it shall recommend to the Supreme Court the suspension, removal, discipline or compulsory retirement of the justice or judge.

(h) The Supreme Court shall review the record of the board's proceedings on the law and facts and may permit the introduction of additional evidence. It shall order suspension, removal, discipline or compulsory

retirement, or wholly reject the recommendation, as it finds just and proper. Upon an order for compulsory retirement, the justice or judge shall be retired with the same rights and privileges were he retired under section sixteen of this article. Upon an order for suspension or removal, the justice or judge shall be suspended or removed from office, and his salary shall cease from the date of such order. All papers filed with and proceedings before the board shall be confidential but upon being filed by the board in the Supreme Court, the record shall lose its confidential character. The filing of papers with and the giving of testimony before the board shall be privileged.

(i) No justice or judge shall participate as a member of the board or of the Supreme Court in any proceeding involving his suspension, removal, discipline or compulsory retirement.

(j) The Supreme Court shall prescribe rules of procedure under this section.

(k) The Supreme Court shall prescribe rule of procedure for the suspension, removal, discipline and compulsory retirement of justices of the peace.

(l) A justice, judge or justice of the peace convicted of misbehavior in office by a court, disbarred as a member of the bar of the Supreme Court or removed under this section eighteen shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.

(m) A justice or judge who shall file for nomination for or election to any public office other than a

judicial office shall forfeit automatically his judicial office.

(n) This section is in addition to and not in substitution for the provisions for impeachment for misbehavior in office contained in article six. No justice, judge or justice of the peace against whom impeachment proceedings are pending in the Senate shall exercise any of the duties of his office until he has been acquitted.

SCHEDULE TO JUDICIARY ARTICLE

This schedule is a part of this judiciary article, and it is intended that the provisions contained herein shall have the same force and effect as those contained in the numbered sections of the article.

This article and schedule, unless otherwise stated herein, shall become effective on January 1, 1969. In this schedule where the word "now" quoted appears it speaks from the date of adoption of this schedule; where the word "present" appears it speaks from the effective date hereof.

Courts Other Than in the City of Philadelphia and Allegheny County

The Supreme Court

Section 1. The Supreme Court shall exercise all the powers and, until otherwise provided by law, jurisdiction now vested in the present Supreme Court and, until otherwise provided by law, the accused in all cases of felonious homicide shall have the right of appeal to the Supreme Court.

The Superior Court

Section 2. Until otherwise provided by law, the Superior Court shall exercise all the jurisdiction now vested in the present Superior Court. The present terms of all judges of the Superior Court which would otherwise expire on the first Monday of January in an odd-numbered year shall be extended to expire in the even-numbered year next following.

Commonwealth Court

Section 3. The Commonwealth Court shall come into existence on January 1, 1970. Notwithstanding anything to the contrary in this article, the General Assembly shall stagger the initial terms of judges of the Commonwealth Court.

The Courts of Common Pleas

Section 4. Until otherwise provided by law, the several courts of common pleas shall exercise the jurisdiction now vested in the present courts of common pleas. The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, and orphan's courts are abolished and the several courts of common pleas shall also exercise the jurisdiction of these courts. Orphans' courts in judicial districts having separate orphans' courts shall become orphans' court divisions of the courts of common pleas and the court of common pleas in those judicial districts shall exercise the jurisdiction presently exercised by the separate orphans' courts through their respective orphans' court division.

Orphans' Court Judges

Section 5. In those judicial districts having separate orphans' courts, the present judges thereof shall

become judges of the orphans' court division of the court of common pleas and the present president judge shall become the president judge of the orphans' court division of the court of common pleas for the remainder of his term without diminution in salary.

Courts of Common Pleas in Multi-County Judicial Districts

Section 6. Courts of common pleas in multi-county judicial districts are abolished as separate courts and are hereby constituted as branches of the single court of common pleas established under this article in each such judicial district.

Community Courts

Section 7. In a judicial district which establishes a community court, a person serving as a justice of the peace at such time:

(a) May complete his term exercising the jurisdiction provided by law and with the compensation provided by law, and

(b) Upon completion of his term, his office is abolished and no judicial function of the kind heretofore exercised by a justice of the peace shall thereafter be exercised other than by the community court.

Justices, Judges and Justices of the Peace

Justices, Judges and Justices of the Peace

Section 8. Notwithstanding any provision in the article, a present justice, judge or justice of the peace may complete his term of office.

Associate Judges

Section 9. The office of associate judge not learned in the law is abolished, but a present associate judge may complete his term.

Retention Election of Present Justices and Judges

Section 10. A present judge who was originally elected to office and seeks retention in the 1969 municipal election and is otherwise eligible may file his declaration of candidacy by February 1, 1969.

Selection of President Judges

Section 11. Except in the City of Philadelphia, section ten (d) of the article shall become effective upon the expiration of the term of the present president judge, or upon earlier vacancy.

Magistrates, Aldermen and Justices of the Peace and Magisterial Districts Other Than in the City of Philadelphia

Magistrates, Aldermen and Justices of the Peace

Section 12. An alderman, justice of the peace or magistrate:

(a) May complete his term, exercising the jurisdiction provided by law and with the method of compensation provided by law prior to the adoption of this article;

(b) Shall be deemed to have taken and passed the examination required by this article for justices of the peace if he has completed one full term of office before creation of a magisterial district, and

(c) At the completion of his term, his office is abolished.

(d) Except for officers completing their terms, after the first Monday in January, 1970, no judicial function of the kind heretofore exercised by these officers, by mayors and like officers in municipalities shall be exercised by any officer other than the one justice of the peace elected or appointed to serve in that magisterial district.

Magisterial Districts

Section 13. So that the provisions of this article regarding the establishment of magisterial districts and the instruction and examination of justices of the peace may be self-executing, until otherwise provided by law in a manner agreeable to this article, the following provisions shall be in force:

(a) The Supreme Court or the courts of common pleas under the direction of the Supreme Court shall fix the number and boundaries of magisterial districts of each class within each judicial district by January 1, 1969, and these magisterial districts, except where a community court has been adopted, shall come into existence on January 1, 1970, the justices of the peace thereof to be elected at the municipal election in 1969. These justices of the peace shall retain no fine, costs or any other sum that shall be delivered into their hands for the performance of any judicial duty or for any service connected with their offices, but shall remit the same to the Commonwealth, county, municipal subdivision, school district or otherwise as may be provided by law.

(b) Classes of magisterial districts.

(i) Magisterial districts of the first class shall have a population density of more than five thousand persons per square mile and a population of not less than sixty-five thousand persons.

(ii) Magisterial districts of the second class shall have a population density of between one thousand and five thousand persons per square mile and a population of between twenty thousand persons and sixty-five thousand persons.

(iii) Magisterial districts of the third class shall have a population density of between two hundred and one thousand persons per square mile and a population of between twelve thousand persons and twenty thousand persons.

(iv) Magisterial districts of the fourth class shall have a population density of between seventy and two hundred persons per square mile and a population of between seven thousand five hundred persons and twelve thousand persons.

(v) Magisterial districts of the fifth class shall have a population density of under seventy persons per square mile and a population of between four thousand persons and seven thousand five hundred persons.

(c) Salaries of justices of the peace.

The salaries of the justices of the peace shall be as follows:

(i) In first class magisterial districts, twelve thousand dollars per year,

(ii) In second class magisterial districts, ten thousand dollars per year,

(iii) In third class magisterial districts, eight thousand dollars per year,

(iv) In fourth and fifth class magisterial districts, five thousand dollars per year.

(v) The salaries here fixed shall be paid by the State Treasurer and for such payment this article and schedule shall be sufficient warrant.

(d) Course of training, instruction and examination. The course of training and instruction and examination in civil and criminal law and procedure for a justice of the peace shall be devised by the Department of Public Instruction, and it shall administer this course and examination to insure that justices of the peace are competent to perform their duties.

Magisterial Districts

Section 14. Effective immediately upon establishment of magisterial districts and until otherwise prescribed the civil and criminal procedural rules relating to venue shall apply to magisterial districts; all proceedings before aldermen, magistrates and justices of the peace shall be brought in and only in a magisterial district in which occurs an event which would give rise to venue in a court of record; the court of common pleas upon its own motion or on application at any stage of proceedings shall transfer any proceeding in any magisterial district to the justice of the peace for the magisterial district in which proper venue lies.

Prothonotaries and Clerks Other Than in the City of Philadelphia

Prothonotaries, Clerks of Courts, Clerks of Orphans' Courts

Section 15. Until otherwise provided by law, the offices of prothonotary and clerk of courts shall become the offices of prothonotary and clerk of courts of the court of common pleas of the judicial district, and in multi-county judicial districts of their county's branch of the court of common pleas, and the clerk of the orphans' court in a judicial district now having a separate orphans' court shall become the clerk of the orphans' court division of the court of common pleas, and these officers shall continue to perform the duties of the office and to maintain and be responsible for the records, books and dockets as heretofore. In judicial districts where the clerk of the orphans' court is not the register of wills, he shall continue to perform the duties of the office and to maintain and be responsible for the records, books and dockets as heretofore until otherwise provided by law.

The City of Philadelphia

Courts and Judges

Section 16. Until otherwise provided by law: (a) the court of common pleas shall consist of a trial division, orphans' court division and family court division.

(b) The judges of the court of common pleas shall become judges of the trial division of the court

of common pleas provided for in this article and their tenure shall not otherwise be affected.

(c) The judges of the county court shall become judges of the family court division of the court of common pleas and their tenure shall not otherwise be affected.

(d) The judges of the orphans' court shall become judges of the orphans' court division of the court of common pleas and their tenure shall not otherwise be affected.

(e) As designated by the Governor, twenty-two of the present magistrates shall become judges of the municipal court and six shall become judges of the traffic court, and their tenure shall not otherwise be affected.

(f) One of the judges of the court of common pleas shall be president judge and he shall be selected in the manner provided in section ten (d) of this article. He shall be the administrative head of the court and shall supervise the court's judicial business.

(g) Each division of the court of common pleas shall be presided over by an administrative judge, who shall be one of its judges and shall be elected for a term of five years by a majority vote of the judges of that division. He shall assist the president judge in supervising the judicial business of the court and shall be responsible to him. Subject to the foregoing, the judges of the court of common pleas shall prescribe rules defining the duties of the administrative judges. The president judge shall have the power to assign judges from each division to each other division of

the court when required to expedite the business of the court.

(h) Until all members of the municipal court are members of the bar of the Supreme Court, the president judge of the court of common pleas shall appoint one of the judges of the municipal court as president judge for a five-year term or at the pleasure of the president judge of the court of common pleas. The president judge of the municipal court shall be eligible to succeed himself as president judge for any number of terms and shall be the administrative head of that court and shall supervise the judicial business of the court. He shall promulgate all administrative rules and regulations and make all judicial assignments. The president judge of the court of common pleas may assign temporarily judges of the municipal court who are members of the bar of the Supreme Court to the court of common pleas when required to expedite the business of the court.

(i) The Governor shall appoint one of the judges of the traffic court as president judge for a term of five years or at the pleasure of the Governor. The president judge of the traffic court shall be eligible to succeed himself as president judge for any number of terms, shall be the executive and administrative head of the traffic court, and shall supervise the judicial business of the court, shall promulgate all administrative rules and regulations, and shall make all judicial assignments.

(j) The exercise of all supervisory and administrative powers detailed in this section sixteen shall be subject to the supervisory and administrative control of the Supreme Court.

(k) The prothonotary shall continue to exercise the duties of that office for the trial division of the court of common pleas and for the municipal court.

(l) The clerk of quarter sessions shall continue to exercise the duties of that office for the trial division of the court of common pleas and for the municipal court.

(m) That officer serving as clerk to the county court shall continue to exercise the duties of that office for the family division of the court of common pleas.

(n) The register of wills shall serve ex officio as clerk of the orphans' court division of the court of common pleas.

(o) The court of common pleas shall have unlimited original jurisdiction in all cases except those cases assigned by this schedule to the municipal court and to the traffic court. The court of common pleas shall have all the jurisdiction now vested in the court of common pleas shall have all the jurisdiction now vested in the court of common pleas, the court of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' court, and county court. Jurisdiction in all of the foregoing cases shall be exercised through the trial division of the court of common pleas except in those cases which are assigned by this schedule to the orphans' court and family court divisions of the court of common pleas. The court of common pleas through the trial division shall also hear and determine appeals from the municipal court and traffic court.

(p) The court of common pleas through the orphans' court division shall exercise the jurisdiction heretofore exercised by the orphans' court.

(q) The court of common pleas through the family court division of the court of common pleas shall exercise jurisdiction in the following matters:

(i) Domestic Relations: desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings for custody of children; divorce and annulment and property matters relating thereto.

(ii) Juvenile Matters: dependent, delinquent and neglected children and children under eighteen years of age, suffering from epilepsy, nervous or mental defects, incorrigible, runaway and disorderly minors eighteen to twenty years of age and preliminary hearings in criminal cases where the victim is a juvenile.

(iii) Adoptions and Delayed Birth Certificates.

(r) The municipal court shall have jurisdiction in the following matters:

(i) Committing magistrates' jurisdiction in all criminal matters.

(ii) All summary offenses, except those under the motor vehicle laws.

(iii) All criminal offenses for which no prison term may be imposed or which are punishable by a term of imprisonment of not more than two years, and indictable offenses under the motor vehicle laws for which no prison term may be imposed or punishable by a term of imprisonment of not more than three

years. In these cases, the defendant shall have no right of trial by jury in that court, but he shall have the right of appeal for trial de novo including the right to trial by jury to the trial division of the court of common pleas. Until there are a sufficient number of judges who are members of the bar of the Supreme Court serving in the municipal court to handle such matters, the trial division of the court of common pleas shall have concurrent jurisdiction over such matters, the assignment of cases to the respective courts to be determined by rule prescribed by the president judge of the court of common pleas.

(iv) Matters arising under The Landlord and Tenant Act of 1951.

(v) All civil claims involving less than five hundred dollars. In these cases, the parties shall have no right of trial by jury in that court but shall have the right of appeal for a trial de novo including the right to trial by jury to the trial division of the court of common pleas, it being the purpose of this subsection to establish an expeditious small claims procedure whereby it shall not be necessary for the litigants to obtain counsel. This limited grant of civil jurisdiction shall be co-extensive with the civil jurisdiction of the trial division of the court of common pleas.

(vi) As commissioners to preside at arraignments, fix and accept bail, issue warrants and perform duties of a similar nature.

The grant of jurisdiction under clauses (iii) and (v) of this subsection may be exercised only by those judges who are members of the bar of the Supreme Court.

(s) The traffic court shall have exclusive jurisdiction of all summary offenses under the motor vehicle laws.

(t) The courts of oyer and terminer and general jail delivery, quarter sessions of the peace, the county court, the orphans' court and the ten separate courts of common pleas are abolished and their jurisdiction and powers shall be exercised by the court of common pleas provided for in this article through the divisions established by this schedule.

(u) The office of magistrate, the board of magistrates, and the present traffic court are abolished.

(v) Those judges appointed to the municipal court in accordance with subsection (e) of this section who are not members of the bar of the Supreme Court shall be eligible to complete their present terms and to be elected to and serve for one additional term, but not thereafter.

(w) The causes, proceedings, books, dockets and records of the abolished courts shall become those of the court or division thereof to which, under this schedule, jurisdiction of the proceedings or matters concerned has been transferred, and that court or division thereof shall determine and conclude such proceedings as if it had assumed jurisdiction in the first instance.

(x) The present president judges of the abolished courts and chief magistrate shall continue to receive the compensation to which they are now entitled as president judges and chief magistrate until the end of their present terms as president judges and chief magistrate respectively.

(y) The offices of prothonotary and register of wills in the City of Philadelphia shall no longer be considered constitutional offices under this article, but their powers and functions shall continue as at present until these offices are covered in the Home Rule Charter by a referendum in the manner provided by law.

(z) If a community court is established in the City of Philadelphia, a person serving as a judge of the municipal or traffic court at that time:

(i) Notwithstanding the provisions of subsection (v) of this section, may complete his term exercising the jurisdiction provided by law and with the compensation provided by law; and

(ii) At the completion of his term, his office is abolished and no jurisdiction of the kind exercised by those officers immediately after the effective date of this article and schedule shall thereafter be exercised other than by the community court.

Allegheny County

Courts

Section 17. Until otherwise provided by law:

(a) The court of common pleas shall consist of a trial division, an orphans' court division and a family court division; the courts of oyer and terminer and general jail delivery and quarter sessions of the peace, the county court, the orphans' court, and the juvenile court are abolished and their present jurisdiction shall be exercised by the court of common pleas. Until otherwise provided by rule of the court of common

pleas and, except as otherwise provided in this schedule, the court of common pleas shall exercise the jurisdiction of the present court of common pleas and the present county court through the trial division. Until otherwise provided by rule of the court of common pleas, the jurisdiction of the present orphans' court, except as otherwise provided in this schedule, shall be exercised by the court of common pleas through the orphans' court division.

(b) Until otherwise provided by rule of the court of common pleas, the court of common pleas shall exercise jurisdiction in the following matters through the family court division:

(i) Domestic Relations: Desertion or nonsupport of wives, children and indigent parents, including children born out of wedlock; proceedings, including habeas corpus, for custody of children; divorce and annulment and property matters relating thereto.

(ii) Juvenile Matters: All matters now within the jurisdiction of the juvenile court.

(iii) Adoptions and Delayed Birth Certificates.

Judges

Section 18. Until otherwise provided by law, the present judges of the court of common pleas shall continue to act as the judges of that court; the present judges of the county court shall become judges of the court of common pleas; the present judges of the orphans' court shall become judges of the orphans' court division of the court of common pleas; the present judges of the juvenile court shall become judges of the family court division of the court of common pleas.

President Judges

Section 19. The present president judge of the court of common pleas may complete his term as president judge; the present president judge of the orphans' court shall be the president judge of the orphans' court division of the court of common pleas for the remainder of his term as president judge, and the present president judge of the county court shall be the president judge of the family court division of the court of common pleas for the remainder of his term as president judge, all these without diminution of salary as president judge. The president judge of the trial division shall be selected pursuant to section twenty of this schedule.

President Judges; Court Divisions

Section 20. Until otherwise provided by law, the trial division, the orphans' court division and the family court division of the court of common pleas shall each be presided over by a president judge, who shall be one of the judges of such division and shall be elected for a term of five years by a majority vote of the judges of that division. He shall assist the president judge of the court of common pleas in supervising the judicial business of the court and shall be responsible to him. Subject to the foregoing, the judges of the court of common pleas shall prescribe rules defining the duties of the president judges. The president judge of the court of common pleas shall have the power to assign judges from one division to another division of the court when required to expedite the business of the court. The exercise of these supervisory and administrative powers, however, shall be subject to the supervisory and administrative powers of the Supreme Court.

The City of Pittsburgh

Inferior Courts

Section 21. Upon the establishment of magisterial districts pursuant to this article and schedule, and unless otherwise provided by law, the police magistrates, including those serving in the traffic court, the housing court and the city court shall continue as at present. Such magistrates shall be part of the unified judicial system and shall be subject to the general supervisory and administrative authority of the Supreme Court. Such magistrates shall be subject to the provisions of this article and schedule regarding educational requirements and prohibited activities of justices of the peace.

Causes, Proceedings, Books and Records

Causes, Proceedings, Books and Records

Section 22. All causes and proceedings pending in any abolished court or office of the justice of the peace shall be determined and concluded by the court to which jurisdiction of the proceedings has been transferred under this schedule and all books, dockets and records of any abolished court or office of the justice of the peace shall become those of the court to which, under this schedule, jurisdiction of the proceedings concerned has been transferred.

Commission and Board

Judicial Qualifications Commission

Section 23. The selection of the first members of the Judicial Qualifications Commission provided for

in section fourteen (a) of this article shall be made as follows: The Governor shall appoint the four non-lawyer members for terms of, respectively, one year, three years, five years and seven years, no more than two of whom shall be members of the same political party. The Supreme Court shall appoint the three non-judge members of the bar of the Supreme Court of Pennsylvania for terms, respectively, of two years, four years and six years, no more than two of whom shall be members of the same political party.

Judicial Inquiry and Review Board

Section 24. The selection of the first members of the Judicial Inquiry and Review Board shall be made as follows: one judge of the Superior Court, one non-judge member of the bar of the Supreme Court, and one non-lawyer member shall be selected for two-year terms; one judge of the Superior Court, one non-judge member of the bar of the Supreme Court, and one non-lawyer member shall be selected for four-year terms; one judge of the court of common pleas shall be selected for a term of two years, one for a term of three years, and one for a term of four years.

General Provisions

Dispensing With Trial by Jury

Section 25. Until otherwise provided by law, the parties, by agreement filed, may in any civil case dispense with trial by jury; and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases.

Writs of Certiorari

Section 26. Unless and until changed by rule of the Supreme Court, in addition to the right of appeal under section nine of this article, the judges of the courts of common pleas, within their respective judicial districts, shall have power to issue writs of certiorari to the municipal court in the City of Philadelphia, justices of the peace and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

Judicial Districts

Section 27. Until changed in accordance with section eleven of this article, the number and boundaries of judicial districts shall remain as at present.

Referendum

Section 28. The officer of the Commonwealth who under law shall have supervision over elections shall cause the question provided for in section thirteen (d) of this article to be placed on the ballot in the 1969 primary election throughout the Commonwealth.

Persons Specially Admitted by Local Rules

Section 29. Any person now specially admitted to practice may continue to practice in the court of common pleas or in that division of the court of common pleas and the municipal court in the City of Philadelphia which substantially includes the practice for which such person was previously specially admitted.